

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JOHN A. PINO, :
Plaintiff : CIVIL ACTION NO. 3:15-1172
v. : (MANNION, D.J.)
(CARLSON, M.J.)
MICHAEL CAREY, et al., :
Defendants :

MEMORANDUM

Pending before the court is the report of Magistrate Judge Carlson, which recommends that the plaintiff's complaint be dismissed with prejudice for failure to state a claim upon which relief can be granted with respect to defendants Hand, Alexander, Letcavage, and Aponick. (Doc. [13](#)).

By way of relevant background, on June 16, 2015, the plaintiff filed the instant action pursuant to [42 U.S.C. §1983](#), alleging violations of his constitutional rights by the defendants in relation to events leading to his current term of imprisonment. (Doc. [1](#)). The plaintiff also filed a motion seeking leave to proceed in forma pauperis along with his complaint. (Doc. [2](#)). After screening the plaintiff's complaint pursuant to [28 U.S.C. §1915\(e\)\(2\)](#), Judge Carlson concluded that it failed to state a claim upon which relief can be granted with respect to six of the eight named

defendants. By report dated June 23, 2015, (Doc. [8](#)), Judge Carlson recommended that the plaintiff's motion to proceed in forma pauperis be granted and the plaintiff's amended complaint be dismissed without prejudice, with respect to defendants Hand, Alexander, Letcavage, Aponick, Kyper, and Hamilton.

On July 9, 2015, prior to this court's examination of Judge Carlson's report and recommendation, the plaintiff filed an amended complaint. (Doc. [9](#)). This court subsequently adopted the recommendation in its entirety and remanded the matter to Judge Carlson for further case management related to the plaintiff's July 9, 2015, amended complaint. (Docs. [11](#), [12](#)). On December 9, 2015, Judge Carlson, after screening the plaintiff's amended complaint pursuant to [28 U.S.C. §1915\(e\)\(2\)](#), issued another report and recommendation. (Doc. [13](#)). In his report, he concluded that the amended complaint, (Doc. [9](#)), fails to state a claim upon which relief may be granted with respect defendants Hand, Alexander, Letcavage, and Aponick because the plaintiff has failed to allege any well-pleaded facts regarding these four defendants, and thus has failed to comply with both Rule 8 of the Federal Rules of Civil Procedure and "basic principles governing civil rights liability." (Doc. [13](#), p. 13). Judge Carlson, therefore, recommends that these four

defendants “be dismissed with prejudice.” (Doc. [13](#), p. 4). No objections have been filed in response to Judge Carlson’s report and recommendation.

Where no objection is made to a report and recommendation, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”

[Fed.R.Civ.P. 72\(b\)](#), advisory committee notes; see also [Univac Dental Co. v. Dentsply Intern., Inc.](#), 702 F.Supp.2d 465, 469 (2010) (citing [Henderson v. Carlson](#), 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every Report and Recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept or modify, in whole or in part, the findings or recommendations made by the magistrate judge. [28 U.S.C. §636\(b\)\(1\)](#); Local Rule 72.31.

The court has reviewed the recommended basis for dismissal of the plaintiff’s complaint presented by Judge Carlson. Because the court agrees with the sound reasoning that led Judge Carlson to the conclusions in his report and finds no clear error on the face of the record, the court will **ADOPT** the report in its entirety. The plaintiff’s complaint is dismissed with prejudice insofar as it asserts claims against defendants Hand, Alexander, Letcavage, and Aponick, but shall be served upon the remaining defendants Carey,

Allar, and Kyper. An appropriate order shall issue.

s/ *Malachy E. Mannion*
MALACHY E. MANNION
United States District Judge

Dated: January 11, 2016

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